

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

COURTNEY JAYNE, Individually and	)	Case No. 4:18-CV-4088-KES
as Personal Representative of the	)	
Estate of M.Z.,	)	Video Deposition of:
	)	
Plaintiff,	)	MIKE HALL
	)	
vs.	)	
	)	
CITY OF SIOUX FALLS,	)	
	)	
Defendant.	)	
	)	

BEFORE: Jeanne Speck Quinn  
Court Reporter and Notary Public  
Rapid City, South Dakota

DATE: February 28, 2019 at 10:00 a.m.

PLACE: Lynn, Jackson, Shultz & Lebrun  
909 St. Joseph Street, Suite 800  
Rapid City, South Dakota

APPEARANCES:

Representing the Plaintiff:	MR. JAMES E. MOORE Woods, Fuller, Shultz & Smith, P.C. 300 South Phillips Suite 300 Sioux Falls, South Dakota
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Representing the Defendant:	MR. PHILIP SIEFF MR. ANTHONY J. SCHRANK Robins Kaplan, LLP 800 Lasalle Avenue Suite 2800 Minneapolis, Minnesota
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\* Videographer - Keith Norman, KC Video Productions

<p style="text-align: right;">Page 126</p> <p>1 high foam levels?</p> <p>2 <b>A Yes.</b></p> <p>3 Q Did you or did you not, before March 1st, 2018, know</p> <p>4 that the foam can hide portions of the falls?</p> <p>5 <b>A The rock formations, yes.</b></p> <p>6 Q Okay. Did you or did you not, before March 1st, 2018,</p> <p>7 know that the foam creates an attraction for visitors</p> <p>8 drawing them even closer to the water?</p> <p>9 <b>A No.</b></p> <p>10 Q You did not know that, correct?</p> <p>11 <b>A Correct.</b></p> <p>12 Q Okay. Before March 1st, 2018, did you, sir, know that</p> <p>13 the fact that the foam could hide portions of the falls</p> <p>14 could create an unknown and unseen hazard to an</p> <p>15 individual?</p> <p>16 <b>A I --</b></p> <p>17 Q "Yes" or "no"?</p> <p>18 <b>A I agree with it. What --</b></p> <p>19 Q Okay.</p> <p>20 <b>A Did I recognize that it could?</b></p> <p>21 Q Yeah.</p> <p>22 <b>A Yes.</b></p> <p>23 Q Before March 1st, 2018 --</p> <p>24 <b>A Yes.</b></p> <p>25 Q -- correct?</p>	<p style="text-align: right;">Page 128</p> <p>1 <b>A Correct.</b></p> <p>2 Q Okay.</p> <p>3 MR. MOORE: And, Counsel, I'm sorry. Just -- are</p> <p>4 you reading from Exhibit 28? Is that what you're</p> <p>5 referring to?</p> <p>6 MR. SIEFF: That's what I'm referring to.</p> <p>7 MR. MOORE: All right, thank you.</p> <p>8 Q (By Mr. Sieff:) And was Regan still employed by the</p> <p>9 City at that point?</p> <p>10 <b>A Yes.</b></p> <p>11 Q What was his job?</p> <p>12 <b>A Emergency Manager.</b></p> <p>13 Q Okay. And Kelby was?</p> <p>14 <b>A Park operations manager, I believe is his title.</b></p> <p>15 Q And Doug Kirkus is an outside safety expert?</p> <p>16 <b>A Correct.</b></p> <p>17 Q Who -- who is very helpful when it comes to conducting</p> <p>18 safety reviews?</p> <p>19 <b>A Yes.</b></p> <p>20 Q Safety audits?</p> <p>21 <b>A Correct.</b></p> <p>22 Q Risk reviews?</p> <p>23 <b>A Yes.</b></p> <p>24 Q Provides a great deal of benefit; someone you rely upon?</p> <p>25 <b>A Yes.</b></p>
<p style="text-align: right;">Page 127</p> <p>1 Falls Park had experienced approximately -- had</p> <p>2 experienced ten drownings dating back to 1980 at the</p> <p>3 park; true?</p> <p>4 <b>A I'd have to go back --</b></p> <p>5 Q That's what it says right here. Do you agree or</p> <p>6 disagree?</p> <p>7 <b>A I'd agree then.</b></p> <p>8 Q Okay. The ad hoc team that was put in charge of</p> <p>9 reviewing the circumstances of the March 18, 2018 of a</p> <p>10 five-year-old named Maggie Zaiger included yourself;</p> <p>11 correct?</p> <p>12 <b>A Yes.</b></p> <p>13 Q Kelby Mieras?</p> <p>14 <b>A Yes.</b></p> <p>15 Q The Police Chief, the Police Captain, the Police</p> <p>16 Lieutenant; correct?</p> <p>17 <b>A There was an ad hoc committee of four people.</b></p> <p>18 Q Okay.</p> <p>19 <b>A But all of those other people were at the initial</b></p> <p>20 <b>meeting.</b></p> <p>21 Q So the ad hoc committee was yourself, Kelby Mieras,</p> <p>22 Michael Hall, and Doug Kirkus; correct?</p> <p>23 <b>A Regan Smith.</b></p> <p>24 Q Regan Smith, excuse me. Regan Smith, Kelby Mieras,</p> <p>25 Michael Hall, and Doug Kirkus.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q Okay. This, the remainder of this document, more or</p> <p>2 less parrots the e-mail that you and I have discussed at</p> <p>3 length that you generated shortly after the drowning;</p> <p>4 yes? I mean, you're welcome to look at it.</p> <p>5 <b>A Yeah.</b></p> <p>6 Q But would you agree with that?</p> <p>7 <b>A I'm sure it's consistent, yes.</b></p> <p>8 Q Well, were you the author of this document that says</p> <p>9 Falls Park Loss Control Review, which is Exhibit 28?</p> <p>10 <b>A Yes, I drafted this.</b></p> <p>11 Q You drafted it.</p> <p>12 <b>A With -- and then the group reviewed it.</b></p> <p>13 Q Okay. And much of the same discussion takes place in</p> <p>14 Exhibit 28 as Exhibit 25, right?</p> <p>15 <b>A I'm sure it does.</b></p> <p>16 Q The same type of things are being said. For example,</p> <p>17 bullet point No. 1 in Exhibit 28 talks about formal park</p> <p>18 reviews done every five years. Same thing is saying --</p> <p>19 <b>A Yeah.</b></p> <p>20 Q Okay?</p> <p>21 <b>A Yes.</b></p> <p>22 Q So the information that was utilized to go into</p> <p>23 Exhibit 28 comes from your e-mail of March 29th, 2018?</p> <p>24 <b>A Yeah. Yes.</b></p> <p>25 Q And you stand by the representations that were made in</p>